

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1274

**Introduced by Committee on Judiciary (Senators Corbett (Chair),
Hancock, Harman, Leno, and Walters)**

February 19, 2010

An act to amend ~~Section 1010.6~~ *Sections 1010.6 and 1013* of the Code of Civil Procedure, relating to service of process.

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, as amended, Committee on Judiciary. Electronic service of process.

Existing law authorizes a trial court to adopt local rules permitting electronic filing and service of documents, subject to rules adopted by the Judicial Council and other specified conditions.

This bill would modify those conditions, and would authorize the court, in any action in which a party has agreed to accept electronic service, or in which the court has ordered electronic service, as specified, to electronically serve any document issued by the court that is not required to be personally served, in the same manner that parties electronically serve documents. The bill would require the Judicial Council to adopt rules relating to the integrity of electronic service. The bill would make other technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1010.6 of the Code of Civil Procedure
2 is amended to read:

1 1010.6. (a) *A document may be served electronically in an*
2 *action filed with the court as provided in this section, in accordance*
3 *with rules adopted pursuant to subdivision (d).*

4 *(1) For purposes of this section:*

5 *(A) “Electronic service” means service of a document, on a*
6 *party or other person, by either electronic transmission or*
7 *electronic notification. Electronic service may be performed*
8 *directly by a party, by an agent of a party, including the party’s*
9 *attorney, or through an electronic filing service provider.*

10 *(B) “Electronic transmission” means the transmission of a*
11 *document by electronic means to the electronic service address at*
12 *or through which a party or other person has authorized electronic*
13 *service.*

14 *(C) “Electronic notification” means the notification of the party*
15 *or other person that a document is served by sending an electronic*
16 *message to the electronic address at or through which the party*
17 *or other person has authorized electronic service, specifying the*
18 *exact name of the document served, and providing a hyperlink at*
19 *which the served document may be viewed and downloaded.*

20 *(2) If a document may be served by mail, express mail, overnight*
21 *delivery, or facsimile transmission, electronic service of the*
22 *document is authorized when a party has agreed to accept service*
23 *electronically in that action.*

24 *(3) In any action in which a party has agreed to accept*
25 *electronic service under paragraph (2), or in which the court has*
26 *ordered electronic service under subdivision (c), the court may*
27 *electronically serve any document issued by the court that is not*
28 *required to be personally served in the same manner that parties*
29 *electronically serve documents. The electronic service of documents*
30 *by the court shall have the same legal effect as service by mail,*
31 *except as provided in paragraph (4).*

32 *(4) Electronic service of a document is complete at the time of*
33 *the electronic transmission of the document or at the time that the*
34 *electronic notification of service of the document is sent. However,*
35 *any period of notice, or any right or duty to do any act or make*
36 *any response within any period or on a date certain after the*
37 *service of the document, which time period or date is prescribed*
38 *by statute or rule of court, shall be extended after service by*
39 *electronic means by two court days, but the extension shall not*
40 *apply to extend the time for filing any of the following:*

1 (A) *A notice of intention to move for new trial.*

2 (B) *A notice of intention to move to vacate judgment under*
3 *Section 663a.*

4 (C) *A notice of appeal.*

5 *This extension applies in the absence of a specific exception*
6 *provided by any other statute or rule of court.*

7 (b) A trial court may adopt local rules permitting electronic
8 filing ~~and service~~ of documents, subject to rules adopted pursuant
9 to subdivision (c) and the following conditions:

10 (1) A document that is filed electronically shall have the same
11 legal effect as an original paper document.

12 (2) (A) When a document to be filed requires the signature, not
13 under penalty of perjury, of an attorney or a self-represented party,
14 the document shall be deemed to have been signed by that attorney
15 or self-represented party if filed electronically.

16 (B) When a document to be filed requires the signature, under
17 penalty of perjury, of any person, the document shall be deemed
18 to have been signed by that person if filed electronically and if a
19 printed form of the document has been signed by that person prior
20 to, or on the same day as, the date of filing. The attorney or person
21 filing the document represents, by the act of filing, that the
22 declarant has complied with this section. The attorney or person
23 filing the document shall maintain the printed form of the document
24 bearing the original signature and make it available for review and
25 copying upon the request of the court or any party to the action or
26 proceeding in which it is filed.

27 (3) Any document that is electronically filed with the court after
28 the close of business on any day shall be deemed to have been
29 filed on the next court day. “Close of business,” as used in this
30 paragraph, shall mean 5 p.m. or the time at which the court would
31 not accept filing at the court’s filing counter, whichever is earlier.

32 (4) The court receiving a document filed electronically shall
33 issue a confirmation that the document has been received and filed.
34 The confirmation shall serve as proof that the document has been
35 filed.

36 (5) Upon electronic filing of a complaint, petition, or other
37 document that must be served with a summons, a trial court, upon
38 request of the party filing the action, shall issue a summons with
39 the court seal and the case number. The court shall keep the
40 summons in its records and may electronically transmit a copy of

1 the summons to the requesting party. Personal service of a printed
2 form of the electronic summons shall have the same legal effect
3 as personal service of an original summons. If a trial court plans
4 to electronically transmit a summons to the party filing a complaint,
5 the court shall immediately upon receipt of the complaint notify
6 the attorney or party that a summons will be electronically
7 transmitted to the electronic address given by the person filing the
8 complaint.

9 ~~(6) A document may be served electronically in an action filed~~
10 ~~with the court as provided in this section. “Electronic service” is~~
11 ~~service of a document, on a party or other person, by either~~
12 ~~electronic transmission or electronic notification. “Electronic~~
13 ~~transmission” means the transmission of a document by electronic~~
14 ~~means to the electronic service address at or through which a party~~
15 ~~or other person has authorized electronic service. “Electronic~~
16 ~~notification” means the notification of the party or other person~~
17 ~~that a document is served by sending an electronic message to the~~
18 ~~electronic address at or through which the party or other person~~
19 ~~has authorized electronic service, specifying the exact name of the~~
20 ~~document served, and providing a hyperlink at which the served~~
21 ~~document may be viewed and downloaded. Electronic service may~~
22 ~~be performed directly by a party, by an agent of a party, including~~
23 ~~the party’s attorney, or through an electronic filing service provider.~~

24 ~~(7) If a document may be served by mail, express mail, overnight~~
25 ~~delivery, or facsimile transmission, electronic service of the~~
26 ~~document may be authorized when a party has agreed to accept~~
27 ~~service electronically in that action.~~

28 ~~(8) In any action in which a party has agreed to accept electronic~~
29 ~~service under paragraph (7), or in which the court has ordered~~
30 ~~electronic service under subdivision (b), the court may~~
31 ~~electronically serve any document issued by the court that is not~~
32 ~~required to be personally served, in the same manner that parties~~
33 ~~electronically serve documents. The electronic service of~~
34 ~~documents by the court shall have the same legal effect as service~~
35 ~~by mail, except as provided in paragraph (9).~~

36 ~~(9) Electronic service of a document is complete at the time of~~
37 ~~the electronic transmission of the document or at the time that the~~
38 ~~electronic notification of service of the document is sent. However,~~
39 ~~any period of notice, or any right or duty to do any act or make~~
40 ~~any response within any period or on a date certain after the service~~

1 of the document, which time period or date is prescribed by statute
2 or rule of court, shall be extended after service by electronic means
3 by two court days, but the extension shall not apply to extend the
4 time for filing any of the following:

5 (A) A notice of intention to move for new trial.

6 (B) A notice of intention to move to vacate judgment under
7 Section 663a.

8 (C) A notice of appeal.

9 This extension applies in the absence of a specific exception
10 provided for by any other statute or rule of court.

11 (10)

12 (6) The court shall permit a party or attorney to file an
13 application for waiver of court fees and costs, in lieu of requiring
14 the payment of the filing fee, as part of the process involving the
15 electronic filing of a document. The court shall consider and
16 determine the application in accordance with Sections 68630 to
17 68641, inclusive, of the Government Code and shall not require
18 the party or attorney to submit any documentation other than that
19 set forth in Sections 68630 to 68641, inclusive, of the Government
20 Code. Nothing in this section shall require the court to waive a
21 filing fee that is not otherwise waivable.

22 (b)

23 (c) If a trial court adopts rules conforming to subdivision (a)
24 (b), it may provide by order that all parties to an action file and
25 serve documents electronically in a class action, a consolidated
26 action, or a group of actions, a coordinated action, or an action
27 that is deemed complex under Judicial Council rules, provided
28 that the trial court's order does not cause undue hardship or
29 significant prejudice to any party in the action.

30 (e)

31 (d) The Judicial Council shall adopt uniform rules for the
32 electronic filing and service of documents in the trial courts of the
33 state, which shall include statewide policies on vendor contracts,
34 privacy, and access to public records, and rules relating to the
35 integrity of electronic service. These rules shall conform to the
36 conditions set forth in this section, as amended from time to time.

37 *SEC. 2. Section 1013 of the Code of Civil Procedure is*
38 *amended to read:*

39 1013. (a) In case of service by mail, the notice or other paper
40 shall be deposited in a post office, mailbox, subpost office,

1 substation, or mail chute, or other like facility regularly maintained
2 by the United States Postal Service, in a sealed envelope, with
3 postage paid, addressed to the person on whom it is to be served,
4 at the office address as last given by that person on any document
5 filed in the cause and served on the party making service by mail;
6 otherwise at that party's place of residence. ~~The service~~ *Service*
7 is complete at the time of the deposit, but any period of notice and
8 any right or duty to do any act or make any response within any
9 period or on a date certain after the service of the document, which
10 time period or date is prescribed by statute or rule of court, shall
11 be extended five calendar days, upon service by mail, if the place
12 of address and the place of mailing is within the State of California,
13 10 calendar days if either the place of mailing or the place of
14 address is outside the State of California but within the United
15 States, and 20 calendar days if either the place of mailing or the
16 place of address is outside the United States, but the extension
17 shall not apply to extend the time for filing notice of intention to
18 move for new trial, notice of intention to move to vacate judgment
19 pursuant to Section 663a, or notice of appeal. This extension
20 applies in the absence of a specific exception provided for by this
21 section or other statute or rule of court.

22 (b) The copy of the notice or other paper served by mail pursuant
23 to this chapter shall bear a notation of the date and place of mailing
24 or be accompanied by an unsigned copy of the affidavit or
25 certificate of mailing.

26 (c) In case of service by Express Mail, the notice or other paper
27 must be deposited in a post office, mailbox, subpost office,
28 substation, or mail chute, or other like facility regularly maintained
29 by the United States Postal Service for receipt of Express Mail, in
30 a sealed envelope, with Express Mail postage paid, addressed to
31 the person on whom it is to be served, at the office address as last
32 given by that person on any document filed in the cause and served
33 on the party making service by Express Mail; otherwise at that
34 party's place of residence. In case of service by another method
35 of delivery providing for overnight delivery, the notice or other
36 paper must be deposited in a box or other facility regularly
37 maintained by the express service carrier, or delivered to an
38 authorized courier or driver authorized by the express service
39 carrier to receive documents, in an envelope or package designated
40 by the express service carrier with delivery fees paid or provided

1 for, addressed to the person on whom it is to be served, at the office
2 address as last given by that person on any document filed in the
3 cause and served on the party making service; otherwise at that
4 party's place of residence. ~~The service~~ *Service* is complete at the
5 time of the deposit, but any period of notice and any right or duty
6 to do any act or make any response within any period or on a date
7 certain after ~~the service of the document served by Express Mail~~
8 or other method of delivery providing for overnight delivery shall
9 be extended by two court days, ~~but the~~ *The* extension shall not
10 apply to extend the time for filing notice of intention to move for
11 new trial, notice of intention to move to vacate judgment pursuant
12 to Section 663a, or notice of appeal. This extension applies in the
13 absence of a specific exception provided for by this section or
14 other statute or rule of court.

15 (d) The copy of the notice or other paper served by Express
16 Mail or another means of delivery providing for overnight delivery
17 pursuant to this chapter shall bear a notation of the date and place
18 of deposit or be accompanied by an unsigned copy of the affidavit
19 or certificate of deposit.

20 (e) Service by facsimile transmission shall be permitted only
21 where the parties agree and a written confirmation of that
22 agreement is made. The Judicial Council may adopt rules
23 implementing the service of documents by facsimile transmission
24 and may provide a form for the confirmation of the agreement
25 required by this subdivision. In case of service by facsimile
26 transmission, the notice or other paper must be transmitted to a
27 facsimile machine maintained by the person on whom it is served
28 at the facsimile machine telephone number as last given by that
29 person on any document which he or she has filed in the cause and
30 served on the party making the service. ~~The service~~ *Service* is
31 complete at the time of transmission, but any period of notice and
32 any right or duty to do any act or make any response within any
33 period or on a date certain after ~~the service of the document, which~~
34 time period or date is prescribed by statute or rule of court, shall
35 be extended, after service by facsimile transmission, by two court
36 days, but the extension shall not apply to extend the time for filing
37 notice of intention to move for new trial, notice of intention to
38 move to vacate judgment pursuant to Section 663a, or notice of
39 appeal. This extension applies in the absence of a specific exception
40 provided for by this section or other statute or rule of court.

1 (f) The copy of the notice or other paper served by facsimile
2 transmission pursuant to this chapter shall bear a notation of the
3 date and place of transmission and the facsimile telephone number
4 to which transmitted, or *to* be accompanied by an unsigned copy
5 of the affidavit or certificate of transmission which shall contain
6 the facsimile telephone number to which the notice or other paper
7 was transmitted.

8 (g) *Electronic service shall be permitted pursuant to Section*
9 *1010.6 and the rules on electronic service in the California Rules*
10 *of Court.*

11 ~~(g)~~

12 (h) Subdivisions (b), (d), and (f) are directory.